

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF BILLERICA ACCESS TELEVISION, INC.]

These Comments are filed by Billerica Access Television, Inc. in support of the comments filed by the Alliance for Community Media ("Alliance"), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors ("NATOA"), and other national local government organizations. Like the Alliance, Billerica Access Television, Inc. believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access ("PEG") services in our community.

Cable Franchising in Our Community

Community Information

Billerica, Massachusetts is a town with a population of approximately 39,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1987.

Our Current Franchise

Our current franchise began on November 2, 1998 and expires on November 1, 2008.

Our franchise requires the cable operator to pay a franchise fee to the town in the amount of 5% of the cable operator's gross revenues. The revenues for franchise

fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access. The Licensee shall make available to the Town one additional PEG Access Channel at such time that the three PEG Access Channels are used to cablecast locally-produced, non-commercial, non-character-generated programming seventy-five percent of the time, for six consecutive weeks; provided, however, that specific programming may be cablecast and recablecast a total of six times during said six week period.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: The Licensee shall provide to the Town totaling the amount of five hundred fifty thousand dollars to be used for the purchase and / or lease of PEG Access equipment and facilities, as follows:

Year One:	\$100,000.00
Year Two:	75,000.00
Year Three:	50,000.00
Year Four:	50,000.00
Year Five:	50,000.00
Year Six:	50,000.00
Year Seven:	50,000.00
Year Eight:	50,000.00
Year Nine:	50,000.00
Year Ten:	25,000.00
Total:	\$550,000.00

Our franchise contains no institutional network ("I-Net") or institutional network requirements, but the Licensee has provided one institutional network connection from Billerica Town Hall to Billerica Access Television, Inc.

Our franchise contains the following requirements regarding emergency alerts: The Subscriber Network shall comply with the FCC's Emergency Alert System ("EAS") regulations.

PEG Access Services

Billerica Access Television, Inc. has provided access services in our community for nineteen years. The number of access channels we operate is three. In our most recently completed fiscal year, Billerica Access Television, Inc.

volunteers provided approximately 450 hours of new original local programming and 450 hours of bicycled programming to the cable subscribers. The facility logged almost 4,000 hours of usage in 2005. Below are the highlights of our services to the community.

- Video bulletin board with text and graphics for community announcements.
 - The CBB runs close to 1,000 community announcements each year.
 - Over 300 organizations, government departments and individuals submit CBB messages each year.
- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.
- Community-produced television programming for special interests (such as - seniors, ethnic and cultural groups, youth, people with disabilities, advocacy groups, health care, etc.)
- Staff-produced television programming on topics of interest to the local community.
- Grants to produce community programming.
- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production courses.
- Provides school w/capability of posting no school / emergency announcements 24 hours a day / 7 days / week.
- Provides police and emergency management teams w/capability of posting emergency announcements 24 hours a day / 7 days / week.
- Since 2000, BATV has awarded a total of \$15,375.00 to graduating high school seniors in the form of scholarships thru the Billerica Scholarship Foundation.
- Participated in the Billerica Public Schools After School Elementary Enrichment program for the past 10 consecutive years.
- Video production facilities including studio, field, editing, and, remote productions.

- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution.
- Technical design, installation, and maintenance support to other non-profit organizations.
- First amendment forum for ideas.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Unique non-local programming available via satellite feed such as Classic Arts Showcase and NASA TV.
- Gavel-to-gavel coverage of local government meetings/hearings and other select "local" governmental proceedings.
- Election night coverage.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Jurisdiction and venue over any dispute, action or suit arising directly from this renewal license shall be in any court of appropriate venue and subject matter jurisdiction located in the State of Massachusetts and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit.

Except in an emergency situation, in the event that the Licensee or the Issuing Authority intends to take legal action against the other party for any reason, it shall first (1) give the other party reasonable notice that an action will be

filed, (2) meet with the other party promptly before it files any such action, and (3) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party and / or its representative(s).

Competitive Cable Systems

Our community

- Has never been approached by a competitive provider to provide service.
- Has not denied any provider the opportunity to serve in our community.
- Does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Billerica, Massachusetts. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of primarily local interest.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Billerica Access Television, Inc. therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law.

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

Billerica Access Television, Inc.

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